

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

DARREN GERRARD CLAY,)	
)	
Petitioner,)	
)	
v.)	1:15CR364-6
)	1:16CV1387
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

ORDER

The Recommendation of the United States Magistrate Judge was filed with the court in accordance with 28 U.S.C. § 636(b) and, on June 23, 2017, was served on the parties in this action. By motion dated June 30, 2017, Petitioner requested an extension of time until July 31, 2017, within which to file an objection. The Magistrate Judge granted the requested extension on July 10, 2017. However, on July 10, 2017, Petitioner filed a "Motion/Affidavit/Reply" adopting the Recommendation to the extent it recommended holding an evidentiary hearing and offering no objection to the Recommendation. (Doc. 212.)

The court has reviewed and hereby adopts the Magistrate Judge's Recommendation.

IT IS THEREFORE ORDERED that Petitioner's Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. 180) and his Motion for Default Judgment (Doc. 195) are DENIED except that the court directs that the Magistrate Judge hold an

evidentiary hearing on Petitioner's claim that his counsel provided ineffective assistance when she (1) "fail[ed] to raise th[e] issue [of a Minor Role reduction under U.S.S.G. § 3B1.2(b)] on 'Direct Appeal' even-though [Petitioner] requested that [counsel] do so" (Doc. 204 at 5), and (2) "withheld the fact that [Petitioner] would have been allowed to plead guilty to 37 months under [a] Fed. R. Crim. P. Rule 11-c-1-c plea" (id. at 10).

Because this is an interlocutory order, it would appear that a finding as to appealability need not be given. To the extent one is required, however, the court finds neither a substantial issue for appeal concerning the denial of a constitutional right affecting the conviction nor a debatable procedural ruling. Therefore, a certificate of appealability is not issued.

/s/ Thomas D. Schroeder
United States District Judge

August 7, 2017